

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2007-148

APRIL LYNN LINTON
94 Twelve Oak Hill
San Rafael, California 94903

Registered Nurse License No. 626980

Respondent.

**ORDER SETTING ASIDE THE DEFAULT DECISION
AND SETTING THE MATTER FOR HEARING**

Pursuant to the Sacramento County Superior Court Order Re Remand in Petition for Writ of Mandate, Case No. 07CS01303, the Board of Registered Nursing hereby sets aside Default Decision No. 2007-148 and refers this matter to the Office of the Attorney General for a hearing and decision.

Dated: 12/17/07

BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

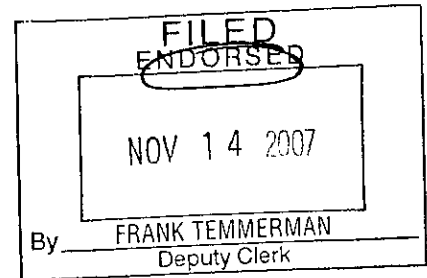


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer

ORIGINAL

EDMUND G. BROWN JR., Attorney General
of the State of California
WILBERT E. BENNETT
Supervising Deputy Attorney General
CAROL S. ROMEO, State Bar No. 124910
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2141
Facsimile: (510) 622-2270

Attorneys for Respondent
Board of Registered Nursing



**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

APRIL LYNN LINTON,

Petitioner,

vs.

BOARD OF REGISTERED NURSING,

Respondent.

CASE NO. 07CS01303

**ORDER RE REMAND
IN PETITION FOR WRIT OF
MANDATE**

Date:
Time:
Dept.: 20
Place:

Upon consideration of the stipulation of the parties and good cause appearing therefor,
IT IS HEREBY ORDERED that the matter of the accusation bearing number 2007-148
against the registered nurse license held by petitioner be herewith remanded to the Board of
Registered Nursing for the setting aside of the Default Decision and the setting of the matter for
hearing.

IT IS FURTHER ORDERED that upon the setting aside of the Default Decision after
remand, the petition for writ of mandate shall be deemed dismissed; provided, however, that in
the event that the Default Decision is not set aside after remand, the petition for a writ of
mandate shall be fully reinstated before the Sacramento County Superior Court.

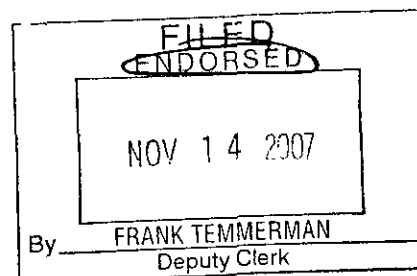
DATED: 11/14/07

JACK V. SAPUNOR
Judge of the Superior Court

ORIGINAL

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 CAROL S. ROMEO, State Bar No. 124910
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7
8 Attorneys for Respondent
Board of Registered Nursing



9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11
12 **APRIL LYNN LINTON,**

13 **Petitioner,**

14
15 **vs.**

16 **BOARD OF REGISTERED NURSING,**

17 **Respondent.**

CASE NO. 07CS01303

**STIPULATION RE REMAND
IN PETITION FOR WRIT OF
MANDATE**

Date:
Time:
Dept.: 20
Place:

18
19 IT IS HEREBY STIPULATED by and between April Lynn Linton, the petitioner in this
20 proceeding, by and through her attorney, Robert J. Sullivan, and the Board of Registered
21 Nursing, the respondent in this proceeding, by and through its attorneys, Wilbert E. Bennett,
22 Supervising Deputy Attorney General, and Carol S. Romeo, Deputy Attorney General, as
23 follows:

24 1. On November 30, 2006, Ruth Ann Terry, M.P.H., R.N., in her official capacity as
25 the Executive Officer of the Board of Registered Nursing, filed Accusation No. 2007-148 against
26 the registered nurse license held by petitioner.

27 2. On March 1, 2007, Board of Registered Nursing issued a Default Decision
28 revoking petitioner's registered nurse license based on petitioner's failure to file a Notice of

1 Defense or request for hearing within 15 days of service of the Accusation.

2 3. On September 28, 2007, petitioner filed the instant petition for writ of mandate in
3 the Sacramento County Superior Court seeking judicial review of the Board's Default Decision
4 revoking her registered nurse license.

5 4. That in lieu of a hearing on the petition for writ of mandate, and without litigating
6 the merits of the action, the parties hereby stipulate that the Sacramento County Superior Court
7 may remand the matter of the accusation bearing number 2007-148 to the Board of Registered
8 Nursing for the setting aside of the Default Decision and the setting of the matter for hearing.

9 5. That the parties further stipulate that upon the setting aside of the Default
10 Decision and the setting of the matter for hearing after remand, the petition for writ of mandate
11 shall be deemed dismissed, and in confirmation thereof, petitioner, upon receipt of an order
12 setting aside the Default Decision shall immediately execute and file a request for dismissal with
13 prejudice with respect to Sacramento County Superior Court case no. 07CS01303; provided,
14 however, that in the event that the Default Decision is not set aside after remand, the petition for
15 writ of mandate shall be fully reinstated before the Sacramento County Superior Court.

16
17 DATED: 10/31/07

18 EDMUND G. BROWN JR.
19 Attorney General

20 WILBERT E. BENNETT
21 Supervising Deputy Attorney General

22 

23

CAROL S. ROMEO
24 Deputy Attorney General

25 Attorneys for Respondent
26 Board of Registered Nursing

27 //

1 DATED:

Nov 1, 2007



ROBERT J. SULLIVAN, ESQ.

Attorney for Petitioner April Lynn Linton

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1 BILL LOCKYER, Attorney General
of the State of California
2 WILBERT BENNETT
Supervising Deputy Attorney General
3 CAROL S. ROMEO, State Bar No. 124910
Deputy Attorney General
4 California Department of Justice
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5 P.O. Box 70550
Oakland, CA 94612-0550
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Facsimile: (510) 622-2270

7 Attorneys for Complainant
8

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 2007-148

14 APRIL LYNN LINTON
94 Twelve Oak Hill
San Rafael, California 94903

OAH No.

15 **DEFAULT DECISION**
16 **AND ORDER**

Registered Nurse License No. 626980

[Gov. Code, §11520]

Respondent.

17 **FINDINGS OF FACT**

18 1. On or about November 30, 2006, Complainant Ruth Ann Terry, M.P.H.,
19 R.N., in her official capacity as the Executive Officer of the Board of Registered Nursing, filed
20 Accusation No. 2007-148 against April Lynn Linton (Respondent).

21 2. On or about September 26, 2003, the Board of Registered Nursing (Board)
22 issued Registered Nurse License No. 626980 to Respondent. The Registered Nurse License was
23 in full force and effect at all times relevant to the charges brought herein and will expire on May
24 31, 2007, unless renewed.

25 3. On or about December 11, 2006, Esther McDonald, an employee of the
26 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
27 2007-148, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
28 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,

1 which was and is 94 Twelve Oak Hill, San Rafael, California 94903. A copy of the Accusation
2 is attached as Exhibit A, and is incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the
4 provisions of Government Code section 11505, subdivision (c).

5 5. On or about December 19, 2006, the aforementioned documents were
6 returned by the U.S. Postal Service marked "No Forwarding Address."

7 6. Government Code section 11506 states, in pertinent part:

8 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
9 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
10 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
11 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

12 7. Respondent failed to file a Notice of Defense within 15 days after service
13 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
14 Accusation No. 2007-148.

15 8. California Government Code section 11520 states, in pertinent part:

16 "(a) If the respondent either fails to file a notice of defense or to appear at the
17 hearing, the agency may take action based upon the respondent's express admissions or upon
18 other evidence and affidavits may be used as evidence without any notice to respondent."

19 9. Pursuant to its authority under Government Code section 11520, the Board
20 finds that Respondent is in default and has waived her right to a hearing. The Board will take
21 action without further hearing and, based on the evidence on file herein, determines that the
22 allegations in Accusation No. 2007-148 are true.

23 9. The total costs for investigation and enforcement of this case are
24 \$1,218.00 as of January 2, 2007.

25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent April Lynn Linton has
27 subjected her Registered Nurse License No. 626980 to discipline.

28 //

1 2. Service of Accusation No. 2007-148 and related documents was proper
2 and in accordance with the law.

3 3. The agency has jurisdiction to adjudicate this case by default.

4 4. The Board is authorized to revoke Respondent's Registered Nurse License
5 No. 626980 based upon the following violations alleged in the Accusation:

6 a. Business and Professions Code (Code) sections 2761(f) and 490 in that
7 Respondent was convicted of a crime substantially related to the qualifications, functions or
8 duties of a registered nurse in that on or about in that on or about August 4, 2005, in the Superior
9 Court of California, County of San Mateo, Case Number SF338689A, entitled *The People of the*
10 *State of California v. April Lynn Linton*, Respondent was convicted by the court on her plea of
11 nolo contendere of violating section 23153(b) of the Vehicle Code (driving with a blood alcohol
12 content of .08% and more), a misdemeanor. On or about August 4, 2005, the counts for violating
13 Vehicle Code sections 23153(a) (driving under the influence of alcohol and causing bodily injury
14 to another person other than the driver) and 23153(b) (driving with a blood alcohol content
15 (BAC) of .08% and more and causing bodily injury to another person other than the driver) were
16 dismissed as part of the plea agreement.

17 On or about August 4, 2005, the imposition of sentence was suspended, and
18 Respondent was placed on Court Probation for 3 years upon terms, which included, but were not
19 limited to, the following: Obey all laws; serve 45 days in county jail, with credit given for time
20 served of 45 days because Respondent was in a residential treatment program; enroll in and
21 successfully complete First Offender Program (FOP) by March 6, 2006; do not drive with any
22 alcohol in system; do not drive without California's Driver's License and Insurance in effect; pay
23 fine of \$1,381.00; submit to an alcohol use test whenever directed by a probation officer and/or
24 peace officer; and the Court retains jurisdiction regarding restitution in this matter.

25 The factual circumstances surrounding said conviction are as follows: On March
26 28, 2005, Respondent's vehicle, a red Volkswagon, collided with another vehicle, a Mazda, while
27 Respondent was driving under the influence of alcohol and with a blood alcohol content of .193.

1 In that collision, the driver of the other vehicle, C. D.¹, sustained severe pain to her neck and back,
2 and was transported to Peninsula Hospital in Burlingame, California for treatment. Respondent
3 also sustained injuries to her left leg in that collision.

4 b. Code section 2761(a) on the grounds of unprofessional conduct as defined
5 by Code section 2762(c), in that on or about August 4, 2005, Respondent was convicted of a
6 crime involving the consumption of alcoholic beverages, as set forth above.

7 c. Code section 2761(a) on the grounds of unprofessional conduct as defined
8 by Code section 2762(b), in that on or about March 28, 2005, Respondent used and was under the
9 influence of alcoholic beverages, while driving a vehicle in Foster City, California, to an extent
10 dangerous or injurious to herself and the public.

11 ORDER

12 IT IS SO ORDERED that Registered Nurse License No. 626980, heretofore issued
13 to Respondent April Lynn Linton, is revoked.

14 Pursuant to Government Code section 11520, subdivision (c), Respondent may
15 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
16 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
17 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

18
19 This Decision shall become effective on April 2, 2007.

20 It is so ORDERED March 1, 2007

21
22 *La Francine W Tate*

23 FOR THE BOARD OF REGISTERED NURSING

24 Attachments:

25 Exhibit A: Accusation No.2007-148
26
27 _____

28 1. The victim in this case was referred to by initials only in order to preserve her confidentiality.

Exhibit A
Accusation No. 2007-148

1 BILL LOCKYER, Attorney General
of the State of California
2 CAROL S. ROMEO, State Bar No. 124910
Deputy Attorney General
3 California Department of Justice
1515 Clay Street, 20th Floor
4 P.O. Box 70550
Oakland, CA 94612-0550
5 Telephone: (510) 622-2141
Facsimile: (510) 622-2270
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7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2007-148

13 APRIL LYNN LINTON
94 Twelve Oak Hill
San Rafael, California 94903

A C C U S A T I O N

14 Registered Nurse License No. 626980

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing.

21 2. On or about September 26, 2003, the Board of Registered Nursing issued
22 Registered Nurse License Number 626980 to April Lynn Linton (Respondent). The Registered
23 Nurse License was in full force and effect at all times relevant to the charges brought herein and
24 will expire on May 31, 2007, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Registered Nursing
27 (Board), under the authority of the following laws. All section references are to the Business and
28 Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states, in pertinent part, that "[t]he board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

7. Section 2762 of the Code states, in pertinent part, that "[i]n addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

...

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

1 "(c) Be convicted of a criminal offense involving the prescription, consumption,
2 or self-administration of any of the substances described in subdivisions (a) and (b) of this
3 section, or the possession of, or falsification of a record pertaining to, the substances described in
4 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
5 thereof."

6 8. Section 490 of the Code states, in pertinent part, that "[a] board may
7 suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the
8 crime is substantially related to the qualifications, functions, or duties of the business or
9 profession for which the license was issued. A conviction within the meaning of this section
10 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action
11 which a board is permitted to take following the establishment of a conviction may be taken
12 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,
13 or when an order granting probation is made suspending the imposition of sentence, irrespective
14 of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

15 9. Section 125.3 of the Code provides, in pertinent part, that the Board may
16 request the administrative law judge to direct a licensee found to have committed a violation or
17 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
18 and enforcement of the case.

19 FIRST CAUSE FOR DISCIPLINE

20 (Substantially Related Conviction)

21 10. Respondent is subject to discipline under sections 2761(f) and 490 of the
22 Code in that she was convicted of a crime substantially related to the qualifications, functions or
23 duties of a registered nurse in that on or about August 4, 2005, in the Superior Court of
24 California, County of San Mateo, Case Number SF338689A, entitled *The People of the State of*
25 *California v. April Lynn Linton*, Respondent was convicted by the court on her plea of nolo
26 contendere of violating section 23153(b) of the Vehicle Code (driving with a blood alcohol
27 content of .08% and more), a misdemeanor. On or about August 4, 2005, the counts for violating
28 Vehicle Code sections 23153(a) (driving under the influence of alcohol and causing bodily injury

1 to another person other than the driver) and 23153(b) (driving with a blood alcohol content
2 (BAC) of .08% and more and causing bodily injury to another person other than the driver) were
3 dismissed as part of the plea agreement. On or about August 4, 2005, the imposition of sentence
4 was suspended, and Respondent was placed on Court Probation for 3 years upon terms, which
5 included, but were not limited to, the following:

6 a. Obey all laws; serve 45 days in county jail, with credit given for time
7 served of 45 days because Respondent was in a residential treatment program; enroll in and
8 successfully complete First Offender Program (FOP) by March 6, 2006; do not drive with any
9 alcohol in system; do not drive without California's Driver's License and Insurance in effect; pay
10 fine of \$1,381.00; submit to an alcohol use test whenever directed by a probation officer and/or
11 peace officer; and the Court retains jurisdiction regarding restitution in this matter.

12 11. The factual circumstances surrounding said conviction are as follows:

13 a. On March 28, 2005, Respondent's vehicle, a red Volkswagen, collided
14 with another vehicle, a Mazda, while Respondent was driving under the influence of alcohol and
15 with a blood alcohol content of .193. In that collision, the driver of other vehicle, C. D.¹,
16 sustained severe pain to her neck and back, and was transported to Peninsula Hospital in
17 Burlingame, California for treatment. Respondent also sustained injuries to her left leg in that
18 collision.

19 SECOND CAUSE FOR DISCIPLINE

20 (Conviction of a Crime Involving Alcohol)

21 12. Respondent is subject to discipline under section 2761(a) of the Code on
22 the grounds of unprofessional conduct as defined by Code section 2762(c), in that on or about
23 August 4, 2005, Respondent was convicted of a crime involving the consumption of alcoholic
24 beverages, as set forth above in paragraphs 10 and 11.

25 //

27 1. The victim in this case will be referred to by initials only in order to preserve her
28 confidentiality.

1 THIRD CAUSE FOR DISCIPLINE

2 (Use of Alcohol to a Dangerous Extent)


3 13. Respondent is subject to discipline under Code section 2761(a) on the
4 grounds of unprofessional conduct as defined in Code section 2762(b), in that on or about March
5 28, 2005, Respondent used and was under the influence of alcoholic beverages, while driving a
6 vehicle in Foster City, California, to an extent dangerous or injurious to herself and the public.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board issue a decision:

- 10 a. Revoking or suspending Registered Nurse License Number 626980, issued
11 to April Lynn Linton;
- 12 b. Ordering April Lynn Linton to pay the Board the reasonable costs of the
13 investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3; and
- 15 c. Taking such other and further action as deemed necessary and proper.
- 16

17 DATED: 11/30/06

18
19 
20 RUTH ANN TERRY, M.P.H., R.N.
21 Executive Officer
22 BOARD OF REGISTERED NURSING
23 State of California
24 Complainant

25 03579110-SF2006402729
26 CSR: 11.06.06
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